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EXAMINER

HANSEN, JAMES ORVILLE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK E. CAVENEY,
SAMUEL J. ADDUCCI and ROBERT L. FRITZ

Appeal 2009-012379
Application 10/780,320
Technology Center 3600

Before JOHN C. KERINS, KEN B. BARRETT and MICHAEL C.
ASTORINO, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jack E. Caveney et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-10 and 25. Claims 11-24 are canceled. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on July 13, 2011, with Andrew M. Calderon, Esq., appearing on behalf of Appellant.

We AFFIRM-IN-PART.

THE INVENTION

Appellants' invention is directed to a wall mount cabinet. Independent claims 1 and 25, reproduced below, are illustrative:

1. A wall mount cabinet comprising:

a rear section having a top side, a bottom side and a first side between the top side and the bottom side, the rear section including a cutout extending from the first side along a portion of the top side, wherein the cutout is adapted to receive a plurality of cables; and

a front section hingedly connected to the rear section at a pivot point immediately adjacent the cutout, the front section having a D-ring secured to a back edge of the front section immediately adjacent the pivot point, wherein the D-ring is adapted to enclose the plurality of cables,

wherein the proximity of the pivot point to the cutout and the D-ring minimizes movement of the plurality of cables when the front section of the cabinet is moved from a closed position to an open position.

25. A wall mount cabinet comprising:

a rear section having a top side, a bottom side and a first side between the top side and the bottom side, the rear section including a cutout extending from the first side along a portion of the top side, wherein the cutout is adapted to receive a plurality of cables; and

a front section hingedly connected to the rear section at a pivot point immediately adjacent the cutout,

wherein the proximity of the pivot point to the cutout minimizes movement of the plurality of cables when the front section of the cabinet is moved from a closed position to an open position.

THE REJECTIONS

The Examiner has rejected:

(i) claim 25 under 35 U.S.C. § 102(b) as being anticipated by Hansson (US 5,568,362, issued October 22, 1996);

(ii) claims 1, 4, 7 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Hansson in view of Bullivant (US 5,765,698, issued June 16, 1998);

(iii) claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Hansson in view of Bullivant and Ehrenfels (US 5,239,129, issued August 24, 1993);

(iv) claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Hansson in view of Bullivant and Neufeld (US 3,623,784, issued November 30, 1971);

(v) claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Hansson in view of Bullivant and Nelson (US 6,061,966, issued May 16, 2000); and

(vi) claims 6, 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Hansson in view of Bullivant and Lawrence (US 6,504,100 B2, issued January 7, 2003).

ISSUES

Did the Examiner err in finding that Hansson discloses all elements set forth in claim 25?

Did the Examiner err in concluding that the combination of Hansson and Bullivant would have rendered obvious the subject matter of claims 1-10?

ANALYSIS

Claim 25--Anticipation--Hansson

Appellants contend that Hansson does not disclose the following limitations appearing in claim 25: (1) “a cutout extending from the first side along a portion of the top side, wherein the cutout is adapted to receive a plurality of cables”; (2) “a pivot point immediately adjacent the cutout”; and (3) “wherein the proximity of the pivot point to the cutout minimizes movement of the plurality of cables when the front section of the cabinet is moved from a closed position to an open position”. (Appeal Br. 9-10).

Appellants argue, with respect to the first limitation identified above, that Hansson discloses that “cable openings 20 are spaced apart from the left side of the back door 13 along a portion of lower edge 22” of the cabinet,

and that “each of the cable openings 20 receives one and only one cable 18.” (Appeal Br. 9). Appellants’ reference to the “lower edge” of the Hansson cabinet, as compared to the claim requiring a cutout along the top side, fails to account for the Examiner’s position (Ans. 4, including illustration) that the Hansson cabinet is being considered in an inverted orientation, and that, in this orientation, the “lower edge” is positioned at the top side of the cabinet. Appellants’ arguments pertaining to “cable openings 20” and how those elements do not meet the claim limitations directed to the “cutout” are also not persuasive.

The Examiner has not interpreted the individual cable openings as constituting a “cutout” as claimed. Rather, as evidenced in the annotated illustration provided by the Examiner (Ans. 4), the cutout includes the entire portion of the top side of the (inverted) Hansson cabinet extending between the arrows pointing to the edges of the area of the rear section of the Hansson cabinet where no material is present. As Appellants’ embodiments evidence that a “cutout” as claimed is a region where the cabinet material is not present (*see, e.g.*, Fig. 11, element 66), we do not find the Examiner’s interpretation of what constitutes a “cutout” in Hansson to be unreasonable. That being the case, it follows that the cutout in Hansson, as illustrated, is plainly “adapted to receive a plurality of cables”, as claimed. (Hansson, Fig. 2). Figure 2 shows that at least five cables can be received, in that there are five cable openings 20 within the span of the cutout.

Appellants contend that the cable openings 20 in Hansson are spaced apart from hinges 28, and therefore Hansson does not disclose “a pivot point immediately adjacent the cutout”, as claimed. (Appeal Br. 9). We have noted above that the Examiner has not regarded the individual cable

openings as corresponding to the claimed cutout, but rather the span where material is not present. To the extent that Appellants are arguing that the claim term “immediately adjacent” requires that there be no spacing whatsoever between the cutout and the pivot point, such an interpretation appears to be overly restrictive. Appellants’ own cabinet construction appears to allow for a small spacing between the cutout and the pivot point, as seen, for example, in Appellants’ Figure 2, where the cutout underlying vertical duct 26 is spaced a small distance from the pivot point 38. The Examiner’s somewhat broader interpretation is consistent not only with Appellants’ disclosed embodiment, but also with the common and ordinary meaning of the term “immediately,” as connoting “very closely or directly” and “near or close by.” COLLINS ENGLISH DICTIONARY (10th ed. 2009), accessed at <http://dictionary.reference.com/browse/immediately> (last viewed on August 31, 2011).

We are not persuaded that the Examiner erred in regarding the cutout section of the Hansson cabinet as being “immediately adjacent” the hinge or pivot point 28.

Appellants contend that the spacing of the cables 18 from the pivot point 28 in Hansson is not sufficiently proximate that movement of the cables is minimized when the front section of the cabinet is moved from a closed position to an open position. (Appeal Br. 9-10). Appellants contend that, in order to account for this purported drawback, Hansson includes excess slack in the cables to prevent the cables from being disconnected and possibly damaged, and that the excess slack can be problematic in environments where space is limited. (Appeal Br. 10). Since the cables move with the front section of the cabinet when the front section is pivoted,

there does not appear to be any need to provide excess slack in the cables, in that the relative position of the cables and the connectors to which they are attached does not change. The “proximity” limitation is little more than a functional recitation flowing from the limitation requiring the pivot point between the front and rear sections to be immediately adjacent the cutout. We have addressed that limitation above.

We are thus not persuaded that the Examiner erred in finding that the Hansson patent anticipates the invention as set forth in claim 25. Accordingly, the rejection will be sustained.

Claims 1, 4, 7 and 9--Obviousness--Hansson/Bullivant

Appellants argue these claims as a group, and we will regard independent claim 1 as being representative.

Appellants contend that even if the Hansson bracket were replaced by a D-ring, the D-ring would not be “secured to a back edge of the front section immediately adjacent the pivot point”, as claimed, but rather would be secured to the bottom surface of the casing forming the front section of Hansson, and would be spaced apart from the pivot point. (Appeal Br. 13). As discussed above with respect to claim 25, we are not persuaded that Hansson fails to disclose that its bracket, for which a D-ring is to be substituted, is “immediately adjacent” the pivot point.

We are, however, persuaded that, were the D-ring proposed to be substituted for the Hansson bracket secured in the same manner as is the Hansson bracket, that it would not be “secured to a back edge of the front section”, as claimed. Hansson discloses that bracket 23 is “mounted inside the central casing **10**.” (Hansson, col. 2, ll. 14-15). This appears to be consistent with the illustration in Figure 2, which shows the bracket on the

floor of the cabinet inboard of a rear cabinet flange. The Examiner does not specifically address this argument, and merely parrots the claim language in his findings, noting that the feature is “(shown)”, later stating that, “when modified/substituted, the D-ring would occupy the same location as [the bracket] (23)”. (Ans. 7, 13). We are of the opinion that it would not be reasonable to interpret the limitation “secured to a back edge of the front section” so broadly as to include a securement of a bracket (or D-ring) inside the cabinet, and apparently spaced at least some distance inboard from the edge, as disclosed in Hansson. Accordingly, we are unable to sustain the rejection of claim 1 as unpatentable over Hansson and Bullivant. The rejection of dependent claims 4, 7 and 9 will also not be sustained.

Claim 2--Obviousness--Hansson/Bullivant/Ehrenfels

Claim 3--Obviousness--Hansson/Bullivant/Neufeld

Claim 5--Obviousness--Hansson/Bullivant/Nelson

Claims 6, 8 and 10--Obviousness--Hansson/Bullivant/Lawrence

Appellants contend that these claims are allowable based on their dependency from claim 1. (Appeal Br. 14). The Examiner does not rely on any of the additional references cited in these rejections that would overcome the deficiency of Hansson and Bullivant discussed above. The rejection of claims 2, 3, 5, 6, 8 and 10 will not be sustained.

CONCLUSION

The Examiner did not err in finding that Hansson discloses all elements set forth in claim 25.

The Examiner erred in concluding that the combination of Hansson and Bullivant would have rendered obvious the subject matter of claims 1-10.

DECISION

The decision of the Examiner to reject claim 25 is affirmed.

The decision of the Examiner to reject claims 1-10 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JRG